

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Criminal No. 5:17CR20**

**DR. ROLAND F. CHALIFOUX, JR.,**

**Defendant.**

**UNITED STATES' RESPONSE TO DEFENDANT'S MOTION TO STRIKE AND  
MOTION FOR RELIEF FROM A JUDGEMENT OR ORDER**

Comes now the United States of America and William J. Powell, United States Attorney for the Northern District of West Virginia, by Sarah E. Wagner, Assistant United States Attorney, and responds to the Defendant's Motion to Strike (dkt. no. 99) and files this Motion for Relief From a Judgement or Order pursuant to Rule 60 of the Federal Rules of Criminal Procedure. In support of its Response and Motion, the government avers as follows:

1. The pretrial diversion agreement which was attached to the government's Motion to Authorize Clerk to Accept and Disburse Restitution Payments (doc. 92) was the partially signed, pretrial diversion agreement between the defendant and the government. At the time the United States filed the agreement, it contained the following language:

After successfully completing your Pretrial Diversion Program and fulfilling all the terms and conditions of the Agreement, no prosecution for the above referenced offense will be instituted in this District, and the charges against you, if any, will be dismissed.

See Partially Signed Pretrial Diversion Agreement ("Partially Signed Agreement") (dkt. no. 92-

2).

2. After the partially signed pretrial diversion agreement was initially filed, but before the government filed its Motion to Dismiss (dkt. no. 95), certain changes were made to the pretrial diversion agreement at the request of the United States Probation Office and the defendant. These changes included the following revision to the above-referenced paragraph in the agreement:

After the Agreement is fully executed, the United States will move to dismiss the pending indictment without prejudice. After successfully completing your Pretrial Diversion Program and fulfilling all the terms and conditions of the Agreement, no prosecution for the above referenced offense will be re-instituted in this District.

See Executed Pretrial Diversion Agreement (“Final Agreement”) (dkt. no. 95-1).

3. The Final Agreement is the exclusive, controlling agreement between the parties, including the United States Probation Officer.

4. The Court’s Order Denying Without Prejudice the Unopposed Motion to Dismiss of the United States (dkt. no. 98) appears to mistakenly or inadvertently reference language contained in the Partially Signed Agreement instead of the Final Agreement.

5. The government agrees with the defendant’s representation that the intent of the parties was for an immediate dismissal following the execution of the Final Agreement.

6. The government does not object to an immediate dismissal, which was the purpose of the government’s filing of the Motion to Dismiss.

7. The government does not believe that any additional change to the language of the pretrial diversion agreement is necessary.

8. The government does not believe that a hearing in this matter is necessary because the parties do not dispute any material facts or law.

9. Rather, the government believes that this Court should reconsider its ruling on the

Motion to Dismiss because it mistakenly relied on the Partially Signed Agreement instead of the Final Agreement, which is the controlling agreement of the parties.

WHEREFORE, for the foregoing reasons, the United States requests that this Court deny the defendant's Motion to Strike, grant the government's Motion for Relief from a Judgment or Order, and grant the government's Motion to Dismiss the Remaining Counts of the Indictment.

Respectfully submitted,

WILLIAM J. POWELL  
United States Attorney

/s/ Sarah E. Wagner

By: Sarah E. Wagner  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I, Sarah E. Wagner, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that I electronically hereby certify I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for the defendant this 16th day of November, 2018.

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